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# Has the Fiscal Court of the County the Authority to Purchase a Fire Truck?

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*Fayette Circuit Court*

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## NOTES

### HAS THE FISCAL COURT OF THE COUNTY THE AUTHORITY TO PURCHASE A FIRE TRUCK?

AN INTERPRETATION OF SEC. 1840, KENTUCKY STATUTES\*

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#### FAYETTE CIRCUIT COURT\*\*

COMMONWEALTH OF KENTUCKY, IN RELATION, ETC., *Appellants.*  
VS.—OPINION No. 16,326  
FAYETTE COUNTY, *Appellee.*

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On January 24, 1931, the Fiscal Court of Fayette County voted an appropriation of the sum of \$10,000.00 for the year of 1931 to be used for the purpose of purchasing a fire truck, the order of said court therefor being as follows.

"On motion of Justice Spurr, seconded by Justice Fister that an appropriation of \$10,000.00 be made for the year, 1931. Said appropriation to be made for the purpose of purchasing a fire truck and said appropriation to be placed in court costs and miscellaneous budget of the General Fund.

"Motion carried by the following votes: Ayes: Justices Kiger, Jordan, Boone, Lawrence, Karsner, Spurr and Fister. Noes: none."

On January 28, 1931, the court adopted a resolution whereby a special committee of the court was appointed, and authorized, instructed, empowered and directed to purchase a fire truck and equipment for the use of Fayette County, in that portion of the county situated outside of the city limits of the city of Lexington, at a cost not to exceed the sum of \$10,000.00.

On January 28, 1931, the Commonwealth of Kentucky in relation to George W Vaughn, County Attorney of Fayette County, and George W Vaughn, as county attorney of Fayette County, objected to the aforesaid action of the Fiscal Court, and

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\*This is the first of a series of certain of Judge King Swope's opinions. Judge Swope presides over the Fayette Circuit Court. In many instances these opinions will discuss the constitutionality of statutes and questions not as yet passed upon by the Court of Appeals of Kentucky.

\*\*Affirmed by Court of Appeals, 239 Ky. 485, 39 S. W (2d) 962 (1931).

appealed therefrom to this Court by filing copies of said order and resolution, and asking that the same be adjudged to be null and void.

On February 7, 1931, by agreement, there was filed in this appeal, a resolution passed by said Fiscal Court, which states, among other things, that, for a number of years the City of Lexington has been sending its fire engine outside of the city limits of Lexington to furnish fire protection to people and property of Fayette County, but that the city had served notice on the Fiscal Court that after February 10, 1931, it would not send its fire apparatus beyond the city limits unless the Fiscal Court would agree to pay the City therefor the sum of \$100.00 for any part of the first hour for one fire company, and the further sum of \$50.00 for any part of any hour thereafter, and an additional sum of \$50.00 for extra help, and any expenses incurred by reason of damage to fire apparatus while making such calls to be borne by the Fiscal Court. That the City of Lexington had offered to man, house and service a fire truck for county runs outside of the city limits, if the county would purchase such a fire truck. It is further set forth in said resolution that much of Fayette County outside of the city limits of Lexington is closely built up, and is composed of valuable property, which makes up a considerable portion of the taxable property of Fayette County, that if a fire would break out in one of these residential sections where there is not adequate means of fire fighting, it would spread to adjoining houses, resulting not only in loss to the owners, but also in a loss to Fayette County by the reduction of the assessable value of such property. The resolution further recites that Fayette County owns the following property situated in Fayette County outside of the city limits of Lexington, namely, one main building used as the County Infirmary, worth approximately \$85,000.00; and one large dwelling house, a number of small cottages and a barn worth approximately \$15,000.00, a dwelling house and outbuildings on the Leestown Pike worth approximately \$25,000.00, a building and equipment at the County Rock Quarry worth approximately \$5,000.00; that in said territory there are situated buildings used for a Remount Station jointly owned by Fayette County and the Commonwealth of Kentucky, worth approximately \$7,500.00,

and thirty-nine school buildings erected by the tax payers of the county worth approximately the sum of \$400,000.00, and that all of said buildings are without any fire protection whatever; that the lives and property of the citizens of Fayette County residing on the outside of the city limits of Lexington are endangered thereby, that the property of the Commonwealth of Kentucky situated outside of the city limits of Lexington, in Fayette County, and property of the county and its citizens and taxpayers situated in said territory, and the lives of the inmates of said property, and of the citizens and taxpayers occupying the same will all be endangered by the loss by fire unless a fire engine and equipment be purchased for such use of Fayette County, and, that therefore, an emergency exists in Fayette County requiring the Fiscal Court to take immediate action to protect the lives and property of the citizens and taxpayers of Fayette County, and the property of Fayette County, and the Commonwealth of Kentucky situated therein against loss by fire.

On February 7, 1931, the parties to this appeal filed an agreed statement of facts herein, containing substantially a recital of the same facts embodied in the foregoing resolution, and in addition thereto stipulating that Fayette County was without "adequate fire protection", and that if a fire truck is purchased, \$10,000.00 is a reasonable sum to be expended therefor; and that the school buildings above mentioned have cisterns from which a water supply may be drawn by any fire engine to fight a fire, and that the engine which the county contemplated purchasing will carry a reserve of 500 gallons of water.

The only question to be decided by the Court on this appeal is whether the Fiscal Court has the authority to make an appropriation from the funds of the county to purchase said fire truck.

The Fiscal Court is a tribunal of limited powers, and has no jurisdiction to appropriate county funds, except as it is authorized by law to do so. *Morgantown Deposit Bank v Johnson*, 108 Ky 507, *Jefferson County v Young*, 120 Ky 546, *Jefferson County v. Peter*, 127 Ky 453.

The powers of the Fiscal Court as defined by Section 1840 of the Kentucky Statutes are

"The Fiscal Court shall have jurisdiction to appropriate county funds authorized by law to be appropriated; to erect and keep in repair necessary public buildings, secure a sufficient jail and comfortable and

convenient place for holding court at the count seat; to erect and keep in repair bridges and other structures and superintend the same; to regulate and control the fiscal affairs and property of the county; to make provisions for the maintenance of the poor, and provide a poor house and farm and provide for the care, treatment and maintenance of the sick and poor, and provide a hospital for said purposes, or contract with any hospital in the county to do so, and provide for the good condition of the highways in the county, and to appropriate county funds to make provisions to secure immigration into the county, and to advertise the resources of the county, and to appropriate county funds for the benefit of colleges and for infirmaries for the sick located in the county, and to execute all of its orders consistent with the law and within its jurisdiction, and shall have jurisdiction of all such other matters relating to the levying of taxes as is by special act now conferred on the county court of levy and claims."

In order for this Court to determine whether the Fiscal Court may appropriate county funds for the purchase of a fire truck, it becomes necessary to examine the above Statute, and determine if the purchase of such a truck comes within the powers above enumerated.

It will be seen that the Statute provides, among other things, that "the Fiscal Court shall have jurisdiction to appropriate county funds" "to erect and keep in repair necessary public buildings" "to make provisions for the maintenance of the poor and provide a Poor House and Farm and provide for the care, treatment and maintenance of the sick and poor, and to provide a hospital for such purpose" "to regulate and control the fiscal affairs and property of the county "

Considering these last mentioned powers in the order named, we see that the Fiscal Court can "erect" and "keep in repair necessary public buildings" Obviously, the Fiscal Court can erect, reconstruct and repair all necessary public buildings, that power being included in the words "keep in repair" The Statute not only gives the Fiscal Court the power to appropriate county funds to repair all necessary buildings, but also gives it the power to appropriate county funds to "keep in repair" all necessary public buildings. To "keep in repair" is a greater power than to merely 'repair' Webster defines the word "keep" as meaning "to preserve from danger, harm or loss, to guard, to cause to remain in a given situation or condition, to remain intact." 35 Corpus Juris, p. 898, also defines the word "keep" as meaning "to cause to continue without essential change of conditions" Applying these definitions to the word-

ing of the above portion of Sec. 1840 of the Kentucky Statutes, it would appear that the Fiscal Court has the power to appropriate county funds not only to erect and repair all necessary buildings, but to "keep in repair" the said buildings, which means to protect them from danger, harm or loss, and to cause them to remain in a state of repair. It is as necessary to protect buildings from fire, as it is to protect them from any of the other elements. The right to perform that duty includes the means reasonably necessary to its accomplishment. By the agreed statement of facts filed in this case, it appears that there are approximately \$137,500.00 worth of public buildings belonging to Fayette County, and situated in Fayette County outside of the limits of the City of Lexington, and \$400,000.00 worth of school houses erected by the taxpayers' money,—and while the school levy is made separate from the county levy, the same taxpayers are taxed to raise the General Fund and the School Fund,—and that all of these buildings are without any protection whatever from loss by fire. It is a matter of common knowledge, and of which this Court takes notice, that fire is one of the greatest menaces and hazards not only to the repair, but also to the very existence of a building. It is also common knowledge that a fire truck, such as is contemplated being purchased, if properly manned by experienced firemen, is a great protection to public property, and will reduce the hazard of fire, and thereby would help "to keep in repair" the public buildings and property of the county

Taking up the next power above mentioned, we find that the Fiscal Court has the right to appropriate funds "to make provisions for the maintenance of the poor and provide a Poor House and Farm, and provide for the care, treatment and maintenance of the sick and poor, and provide a hospital for said purpose" Fayette County, at an expenditure of approximately \$100,000.00, has provided a County Infirmary for the above purpose, which, although very near Lexington, nevertheless is beyond the city limits, and the buildings thereon, and the patients therein are without any protection from fire whatever. A fire truck, such as is planned to be purchased, could run from the fire station in Lexington to said Infirmary in five to eight minutes at the most, and in the event of a fire, with a crew of trained fire-

men, could probably save not only the property of the county, but the very lives of the patients interned there. There are over one hundred persons in the County Infirmary, most of them are old and infirm and a large number of them are bed ridden. Few, if any, of the inmates of the County Infirmary would be physically able to render any assistance in fighting a fire, or to use the limited and inadequate fire apparatus installed in the building, should a fire occur. It would seem that the authority to make provision for the maintenance of the poor, to provide a Poor House, to provide for the care, treatment, and maintenance of the sick, and to provide a hospital for such purpose, would include the power to make all adequate provisions for fire apparatus to protect these buildings and the lives of the patients who are interned therein.

In the case of *Cann v. Burroughs Adding Machine Co.*, 180 Ky 568, it was held that the Fiscal Court had authority under the Statute supra to purchase an adding machine for the County Clerk. The Court said.

"The first question presented for decision by the appeal is, whether the fiscal court had authority to purchase for its use or that of the county clerk an adding machine. We think this question must be given an affirmative answer. It is true the fiscal court is a court of limited jurisdiction, and, therefore, without power to appropriate county funds except as authorized by law. *Jefferson County v. Young*, 120 Ky 456; *Hollis, et al. v. Weissenger, County Judge*, 142 Ky. 129. It is likewise true that state and county governments never become debtors by implication; in order to show that the state or county is responsible for a claim or demand the claimant must show a legal obligation on the part of the state or county to pay it. *Allen v. Mercer County*, 174 Ky. 566. We think that the authority to purchase an adding machine like that here in controversy is conferred upon the fiscal court by Kentucky Statutes, Section 1840. In *Simons v. Gregory, etc.*, 120 Ky. 123, we held that the fiscal court of Jefferson County was authorized to make an appropriation to provide an elevator for the court house, as elevators were in common use in Louisville for access to the several stories of a building like that of the Jefferson County Court House and were necessary for that purpose. In *Hollis v. Weissenger*, supra, it was held that electric fans could be purchased by the fiscal court for the use of the county clerk's office, because such fans are in common use and recognized as a necessity in such public buildings, and in the clerk's office in question were indispensably so because of the unsanitary conditions obtaining therein. It is further true that adding machines are not expressly mentioned in Kentucky Statutes, Section 1840; but neither are elevators, electric fans and other things indispensably necessary to the proper conduct of the business of the court, such as typewriters, pens, pencils, ink, paper and books, authority to purchase which by the fiscal courts has never been doubted. The adding machine not only facilitates the work required of county officers such as clerks of the courts, sheriff, etc., but its accuracy is such as to prevent errors in the computation of figures. Indeed, it

may well be said that an adding machine has become a practical necessity in the proper conduct of the business of a court controlling the fiscal affairs of a county."

Times and conditions have changed greatly since the enactment of that Statute (1840) and what would have been considered adequate means of keeping public buildings in repair at that time would be wholly inadequate today, likewise what would have been adequate provision for the care, treatment and maintenance of the poor and sick twenty-five years ago would today almost be considered neglect. Fire buckets and hand fire extinguishers are as much out of date for fire fighting and protecting buildings as was the antiquated equipment which the Court of Appeals in the above decision held might be superseded by modern appliances.

If the Fiscal Court is authorized, as was held in *Hollis v Weissenger, supra*, to install electric fans in the office of the county clerk, upon the ground that they are in common use and recognized as a necessity in public buildings,—if the Fiscal Court is authorized, as was held in *Cann v Burroughs Adding Machine Company, supra*, to make an appropriation for an adding machine to facilitate the work of the County Clerk, to prevent error,—if the Fiscal Court has the authority to appropriate for an elevator, as was held in *Simons v. Gregory, supra*, as elevators are in common use, then certainly the Fiscal Court has power to purchase fire apparatus to protect the buildings already erected, and protect the lives of those charges of the County located therein. A modern fire truck is as much in common use today and as much of an improvement over the old bucket brigade of yesterday as the elevator is over the stair case or the electric fan is over the palm leaf or the adding machine is over the old fashioned ciphering.

Undoubtedly the county had the right to purchase fire extinguishers, hose, sprinklers, and fire escapes or any other equipments or machines necessary in the buildings at the County Infirmary, to protect them from fire and to reduce the fire rates, if the county had the right to do this then, in line with the above decision, it would have the right to adopt more modern and up-to-date methods, and therefore purchase motorized fire engines to be kept in the city of Lexington and manned by expert



firemen, which could reach, not only the Infirmary, but the other buildings of the county as well, within a few minutes after receiving the alarm.

The county attorney has filed an able brief, in which he insists that the law as written prohibits the Fiscal Court from expending the money of the county for the purpose of purchasing a motorized fire engine. In support of his contention he relies on the case of *Jefferson County v. Peter*, 127 Ky 453, and so much of the case of *Hollis v. Weissenger*, 142 Ky 129, as holds that the Fiscal Court of Jefferson County was not authorized to purchase an automobile for the Fiscal Court in which to make its inspections. With that contention this Court does not agree, nor does it believe that the case he relies on supports his position. Taking those cases in the order named we find that in the case of *Jefferson County v. Peter*, the Court of Appeals said that taxes could be levied only for public purposes, and that laws authorizing the appropriation of public funds are not to extend by construction beyond the natural and fair meaning of the words used. That Court in the case referred to sums up its decision to the effect that the Fiscal Court is without authority to pay the County Clerk for services for which the Statutes made no provision, and that the Fiscal Court had no authority to pay the County Treasurer for extra services rendered to the County,—and in that case held that the Fiscal Court was without authority to pay interest in a certain case. Neither that case nor the authorities cited therein can be considered as authority against the purchase of a fire engine for the protection of the property of the county and the property of all the citizens and taxpayers of the county. This is not a matter of paying some officer a greater compensation than that allowed by law,—nor is it to be compared with the payment of interest in a certain case where the law made no provision for interest. It is the use of a very small part of the taxpayers' money for the purpose of protecting the property and lives of all the taxpayers, and for the purpose of protecting all of the public buildings of the county outside of the city limits of Lexington.

In the case of *Hollis v. Weissenger*, 142 Ky 129, the second case relied upon by the County attorney, the Fiscal Court of Jefferson County purchased an automobile for the use of the

Committee of the Fiscal Court in investigating the County roads, and the Appellate Court held such act unlawful and beyond the jurisdiction of the Court, because the Statutes do not permit the purchase of an automobile or any other kind of vehicle for the use of the members of the Fiscal Court, or any employe of the county in the performance of any duty or inspection or supervision required of them. In that case the objection was not directed at the kind of vehicle, but the purpose to which it was to be put, and the question decided there was the right of the Court to furnish a certain committee of said Fiscal Court the convenience of means of transportation, and did not determine the right of the Fiscal Court to purchase a motorized fire engine to be used, not for the convenience of the Fiscal Court itself or for any other officer, but to protect and preserve the property of the County. The same case held, as above stated, that the Court might properly purchase electric fans for the County Clerk's office. The automobile being a mere convenience for a committee of the Fiscal Court, whereas, electric fans, being in common use and a necessity, contributed not only to the health of the working force of said office, but to the comfort and health of all persons thronging said office on business.

In the case of *Jefferson County v Young*, 120 Ky 546, 86 S. W 985, relied on by the Attorney General in his opinion, the Court of Appeals held that the Fiscal Court was without authority to have certain plats made for the assessor, which would assist him in making his assessment. But that case only goes to the extent of holding that the Fiscal Court had no right to furnish the Assessor with certain conveniences in the way of maps and charts, and the question there determined was the power of the Fiscal Court to furnish a certain officer with certain conveniences, which was the same question before that Court in the case of *Hollis v. Weissenger*, *supra*, but here, the appropriation was not for the mere convenience and accommodation of a mere officer or committee, but for a necessity which would be for the use and benefit of all the taxpayers, and for the protection of property purchased with the taxpayers' money.

In the case of *Taylor v Remy*, 156 Ky 393, 161 S. W 204, the question was before the Court of Appeals as to the right of the Fiscal Court to employ accountants for the purpose of in-

vestigating the affairs of various County officers. This case was decided December 11, 1913, and at that time Section 1840 of the Kentucky Statutes, defining the jurisdiction and power of the Fiscal Court, did not contain the provision which it now contains authorizing the county to have county offices audited, etc., this provision having been added by amendment of 1922. The Court of Appeals in holding that the Fiscal Court had authority to make an expenditure for this purpose said.

"The fiscal court is charged by statute with the duty of looking after the fiscal affairs of the county, and this puts upon it the responsibility that attaches to any other business body, and, if it could not, when the occasion arises to demand it, have an investigation made of the books, and accounts, and records of any one or more of the officers, agents or employees of the county who have the control of or right to receive pay out of the funds of the county, the court could not, in any proper manner, perform the duty required of it in the management of the fiscal affairs of the county. There is scarcely a business institution in the state of any magnitude that does not have its books examined by some skilled accountant, and there are many good reasons why the fiscal court should be permitted to exercise this character of supervision over the persons charged with the collection or expenditure of the public funds."

It will be noted that at that time there was no provision of the Statute authorizing this expenditure but the Court held under that part of the Statute which provides that the Fiscal Court shall have jurisdiction "to regulate and control the fiscal affairs and property of the County", the Court might deem it wise and expedient to investigate the affairs of one or more of the officers, agents and employees of the county, and that they could not make this without employing some competent attorney

It is stated in the opinion of the Court that there is scarcely a business institution in this state that does not have its books examined by a skilled accountant and that there are many good reasons why a Court should be permitted to exercise this supervision over persons charged with the collection and expenditure of public funds. On the same principle we can say that there is scarcely a business institution in the State that does not make provision to protect its houses, buildings, and property from destruction by fire, and to do this they employ modern methods.

Certainly the county has as much right to protect the property of the county and of its citizens and taxpayers, which is the property upon which taxes are paid to raise the revenue of

the county, as it has to expend money to make an investigation of the affairs of the officers of the county

In the case of *Jefferson County v. Jefferson County Fiscal Court*, 161 Ky 538, 170 S. W 1171, the County Attorney took an appeal from certain orders of the Fiscal Court and thereafter the Fiscal Court entered an order employing attorneys to represent it on appeal. There is nothing in Section 1840 which authorizes the Fiscal Court to employ special counsel, but the Court of Appeals held in that case, and in other cases that the Fiscal Court had the power to employ counsel to represent the County where its interests were concerned. The Court said "The power to regulate and control the fiscal affairs of the county necessarily carries with it the power to employ counsel when counsel is necessary to protect the interests of the County"

If the fiscal court has a right to employ counsel when for some reason the County Attorney cannot represent it, it certainly would have the right to buy a fire engine with which to protect the property of the county

As pointed out by Judge Adams, one of the defendants herein, in his able brief, in some of the cases holding that the Fiscal Court did not have the authority to do certain things, the Court of Appeals has held that the power to do that particular thing had been delegated to some other officer, and where the authority had been delegated to some other officer, and not specifically delegated to the Fiscal Court, there was no reason in holding that the Fiscal Court had that authority

In regard to the purchase of a fire truck for the protection of the property of the county, this authority had not been delegated to any one else. If the property of Fayette County, the public property in Fayette County, and the lives and property of citizens and wards of Fayette County outside the city limits are to be protected against fire, they must be protected by the Fiscal Court.

The County would have no authority to purchase a fire truck for the protection of property within the city limits, because the city is given the specific right and it is made the duty of the city to provide fire protection within the city limits. In a number of cases the question has been raised as to whether or not the Fiscal Court has authority under the Statute conferring general author-

ity for payment for services to an officer to search out omitted property to have it assessed. The Courts have held that if there is some officer whose duty it is to find omitted property, and have it assessed, then the Fiscal Court has no authority to employ some one else to do this work. As above pointed out, no one else has authority to protect the property of the county, and the lives of the public charges of the county in these buildings, or the property and lives of the citizens and taxpayers in this county except the Fiscal Court.

Mention has been hereinabove made of the number of school buildings located in the county, which were erected by the money of the taxpayers. If these buildings burn, and have to be replaced, it will add an additional burden to all of the taxpayers in the county outside of the city limits. It is a well known fact that these buildings house hundreds of children of tender years, and fire protection for those buildings and those children is a demand and a necessity. The Fiscal Court is expected to act in the conduct of county affairs as an ordinarily prudent business man would act in transacting his own affairs. Certainly the Fiscal Court would be censured if it spent a huge sum of money in building a county infirmary or some other county institution and then failed to take out fire insurance on such buildings. It might as justly be censured if it failed to take necessary steps to adequately protect the county buildings from fire and to protect the lives of the inmates of those buildings. If a building is destroyed by fire, fire insurance will help to rebuild the building, but it would not restore the life that might be lost in the conflagration, neither would it keep the county nor the inmates of such buildings from suffering great inconvenience and hardship during the time such building was being rebuilt.

There are other considerations which make it equally imperative that the Fiscal Court take such action, among which is the fact that as set forth in the resolution herein, there are thickly populated residential sections existing in Fayette County outside the city limits of Lexington, composed of costly and valuable residences, stock barns and other valuable property, and that it is an absolute necessity that the county have fire protection outside the city limits. Should a fire break out in any of these residential sections, it would result in a conflagration

that would greatly reduce the assessable property of the county, and thereby reduce the amount of taxable property in the county, and the revenue of the county derived therefrom.

This court is of the opinion that under the statute, *supra*, it was not only within the right and power of the Fiscal Court to make the appropriation in question, but that it was the duty of that Court to do so. The appeal will be dismissed, and the Clerk is directed to make this opinion a part of the record.

KING SWOPE,  
Judge, Fayette Circuit Court.